

The Appeals Board adopts the stipulations listed in the Award of the Administrative Law Judge.

ISSUES

The single issue on appeal is the nature and extent of claimant's disability. It is undisputed that claimant suffered an injury to her left arm on June 21, 1990, when she slipped and fell on a wet spot on the floor of the respondent's kitchen. It is also undisputed that prior to the fall claimant suffered from rheumatoid arthritis affecting many of her joints. The specific question before the Appeals Board is whether, in addition to the injury to the arm, the fall permanently aggravated, accelerated or intensified claimant's preexisting rheumatoid arthritis.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After review of the record and consideration of the arguments of the parties, the Appeals Board finds, for the reasons stated below, that claimant's rheumatoid arthritis was, as found by the Administrative Law Judge, temporarily but not permanently aggravated, accelerated, or intensified by the June 21, 1990, accident arising out of and in the course of her employment.

Claimant's rheumatoid arthritis was diagnosed when she was about 17 years old. It affects most of her joints as well as her neck and back. In 1988, approximately eight years after the initial diagnosis, she began working for respondent. Respondent operates a retirement living facility and claimant worked as an activities director. Respondent employed claimant with full knowledge of the arthritis. On June 21, 1990, claimant slipped on a wet spot on respondent's kitchen floor and fell, fracturing the radial head of her left arm. There is no evidence indicating that her fall was a result of her rheumatoid arthritis. Approximately one week after the fall, claimant was hospitalized for a flare-up of her arthritis.

The Administrative Law Judge found that claimant has a ten percent (10%) permanent partial disability to her left arm as a result of the injury. This finding was consistent with the medical testimony of the two physicians who gave opinions about the disability in the arm. Dr. Shechter testified claimant has a ten percent (10%) permanent partial disability to the arm as a result of her fall. He gave no opinion regarding the rheumatoid arthritis, indicating that evaluation of the arthritis should be done by a rheumatologist. Dr. Healy testified that claimant has a twenty-five percent (25%) disability in her left arm, ten percent (10%) of which resulted from her fall and fracture. The other fifteen percent (15%) he attributes to the arthritis. He does not testify the fall aggravated the arthritis. It appears both the fracture and the arthritis contributed independently to the disability in her arm. The parties do not challenge this finding.

Claimant contends, however, that she suffered additional permanent general disability by permanent aggravation, acceleration or intensification of her systemic rheumatoid arthritis. Two physicians testified regarding the effect of the fall and arm injury on claimant's rheumatoid arthritis. Dr. Perri Ginder, a rheumatologist who treated claimant's arthritis both before and after her fall at work, testified that in her opinion the condition permanently worsened after the fall. When asked if the condition worsened because of the fall, she answered: "It seems that way." (T. 13). She acknowledged that the trauma did not directly impact on the arthritis. She also testified that it is difficult to give

a cause and effect opinion but noted it is common to see a history of trauma immediately before onset of a rheumatoid arthritis disease. Although she had not previously given a disability rating, she rated claimant's disability at seventy percent (70%). She agreed claimant had permanent disability before the fall which in her opinion was increased by thirty to forty percent (30-40%) after the fall.

Dr. Kent A. Huston, also a rheumatologist, testified that, in his opinion, the fall and injury at work did not have any significant effect on the progress of the rheumatoid arthritis and did not cause any permanent aggravation or acceleration of the disease. According to Dr. Huston, rheumatoid arthritis is not a disease of the joints. It is a systemic disease, but does tend to localize in the lining of the joints so that the joints become hypertrophic. It invades the cartilage and bone in the joints. He described claimant's condition as progressive and indicated that what he saw was nothing more than he would expect from the normal progression of her disease.

The Appeals Board finds the opinion of Dr. Huston to be more persuasive. As he points out in his testimony, claimant's condition had not been stable prior to the fall at work. Approximately ten months before claimant fell at work, Dr. Ginder noted in her records of August 1989 that condition was active and progressive. She gave cortisone-type injections in the shoulders in December of 1989 and to the knees in January of 1990. In March of 1990, a few months before the fall at work, Dr. Ginder prescribed, and claimant began taking, prednisone.

After the fall at work, claimant did experience a flare-up and was hospitalized for approximately two weeks for treatment of the rheumatoid arthritis. Thereafter, the course of the condition seemed consistent with the progression prior to the fall. Her arthritis did become worse, followed by a plateau or improvement, and then other flare-ups and a worsened condition. From the record as a whole we cannot say claimant has established that the fall at work permanently aggravated, accelerated or intensified claimant's condition. Even the opinion of Dr. Ginder lacks certainty.

The Appeals Board does agree, however, with the conclusion of the Administrative Law Judge that the hospitalization for flare-up of her arthritis in July, 1990, shortly after the fall, was the result of a temporary aggravation caused by her fall at work. Dr. Ginder states generally her belief is that the flare-up was a result of the fall. Even Dr. Huston appears to attribute the initial flare-up to the fall. Even though he appears to consider the flare-up after the fall to be related to the fall, he finally concludes that the fall has not had any significant permanent effect on the course and progress of the disease. The Appeals Board, therefore, finds that the two-week hospitalization and related temporary total disability should be paid by respondent but that claimant has not proven any permanent aggravation, acceleration, or intensification of the arthritis resulting from the fall. The Appeals Board therefore affirms in all respects the decision of the Administrative Law Judge.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Alvin E. Witwer, dated March 21, 1994, should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of July, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dale E. Bennett, 7101 College Boulevard, Suite 710, Overland Park, KS 66210
Patricia A. Wohlford, PO Box 26441, Overland Park, KS 66225
John C. Whitaker, 7940 Parallel, Kansas City, KS 66109
Alvin E. Witwer, Administrative Law Judge
George Gomez, Director